

MATTER OF ATHANASOPOULOS

In Section 246 Proceedings

A-13864002

Decided by Board December 30, 1971

- (1) Communications between respondent and his attorney for the purpose of perpetrating a fraud against the immigration laws are not privileged communications.
- (2) A delay of approximately 3½ years between the time of the Government's first knowledge of respondent's fraudulent marriage and the initiation of rescission proceedings does not constitute a denial of due process of law since rescission proceedings are civil in nature and pursuant to section 246(a) of the Immigration and Nationality Act may be instituted at any time within 5 years after adjustment of status of a person under section 245 of the Act.
- (3) Refusal of the special inquiry officer to subpoena certain witnesses and to provide for the taking of depositions in Greece was not a denial of due process where the record clearly reveals that the whereabouts of the witnesses in Greece was unknown and the testimony of the other witnesses to be subpoenaed would be cumulative of competent testimony in the record on the issue in question.
- (4) Where the Government has produced evidence of a clear case of fraud and of ineligibility for adjustment of status, and the respondent has refused to testify on matters within his personal knowledge and has failed to rebut the evidence of the Government, rescission of adjustment of status is proper.

ON BEHALF OF RESPONDENT:
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(Brief filed)

ON BEHALF OF SERVICE:
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Appellate Trial Attorney

The respondent, a native and citizen of Greece, appeals from an order entered by the special inquiry officer on August 26, 1969 pursuant to the provisions of section 246 of the Immigration and Nationality Act, 8 U.S.C. 1256. The order rescinds an adjustment of his status to that of a permanent resident alien under section 245 of the Act, 8 U.S.C. 1255. Exceptions have been taken to the